IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Writ Petition No. 281 of 2005 (S/S)

Vigraj Singh & others …… Petitioners

Versus

State of Uttaranchal
Through Sugar Secretary,
Civil Secretariat,
Dehradun and others …… Respondents

Mr. Arvind Kumar Sharma, Advocate for the petitioners.
Mr. C.K. Sharma, Advocate for respondent Nos. 2 & 3.

Hon'ble Prafulla C. Pant, J.

Heard learned counsel for the petitioners and learned counsel for respondent Nos. 2 and 3.

2) This writ petition has been filed on behalf of the Clerks working in Kisan Sahkari Chini Mills, Nadehi, District Udham Singh Nagar for their regularisation of services.

3) Learned counsel for the respondent Nos. 2 and 3 raised a preliminary objection relying on the ratio contained in ***General Manager, Kisan Sahkari Chini Mills Ltd., Sultanpur V. Satrughan Nishad and others; (2003) 8 Supreme Court Cases 639*** and submitted that the Kisan Sahkari Chini Mills are not the instrumentalities of the State for the purposes of Article 12 of the Constitution of India. In said judgment, Hon'ble the Apex Court has after considering the various case law, held in its paragraph 9 ***"that the High Court has no jurisdiction to entertain an application under Article 226 of the Constitution. In the present case, the Mill is engaged in the manufacture and sale of sugar which, on the same analogy, would not involve any public function. Thus, we have no difficulty in holding that the***

jurisdiction of the High Court under Article 226 of the Constitution could not have been invoked." In above mentioned referred case also the workmen had approached the High Court under Article 226 of the Constitution of India against Kisan Sahkari Chini Mill challenging the retrenchment on the ground that the services of the workmen had been dispensed with in violation of Section 6N of the U.P. Industrial Disputes Act, 1947. Facts in the present case are similar and identical to the extent that here also the respondent, Kisan Sahkari Chini Mill is a registered society under U.P. Co-operative Societies Act, 1965.

4) On behalf of the petitioners it is submitted that provisions of Article 12 of the Constitution are attracted only when the petitioners challenge action of the respondents on the ground of fundamental rights. I have examined the matter from that angle also. In the present petition, form Clause (i) and (j) as mentioned in the ground of the petition, the petitioners have stated that because the action of the respondents in not regularizing the services of the petitioners and not making the payment of the salary in the regular scale of pay is not only illegal and arbitrary but is also violation of the fundamental rights of petitioners guaranteed to them. The petitioners further stated that because the arbitrary and discriminatory approach of the respondents can very well be judged from the fact that on one hand the persons engaged after the engagement of the petitioners are getting the salary in the minimum scale of pay whereas the petitioners are getting rupees 100 per day and the deductions are made on every holiday and on every absence of the petitioners. This clearly refers to Article 14 of the Constitution. No doubt, Article 226 of the Constitution covers cases relating to enforcement of not only the fundamental right but for other purposes also. However, in view of the grounds as aforesaid,

this petition is based on the violation of the fundamental right as contained in Article 14 of the Constitution.

5) In the circumstances, in view of the clear cut principle of law as contained in aforesaid case of ***General Manager, Kisan Sahkari Chini Mills Ltd., Sultanpur V. Satrughan Nishad and others; (2003) 8 S.C.C. 639,*** since the respondent against whom the relief has been sought, being Kisan Sahkari Chini Mill cannot be said to be "STATE" or its instrumentality, this Court doesn't find itself inclined to exercise writ jurisdiction in the present matter. For that reason the writ petition appears to be not maintainable and dismissed in limine with the observation that the petitioners may seek appropriate remedy available under any other law.

(Prafulla C. Pant, J.)

Dt.: 18th March, 2005

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